

July 11, 2003

Via e-mail and hand delivery

Mary L Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Comments of KeySpan Energy Delivery New England on the Department's
Briefing Question
D.T.E. 01-106

Dear Ms. Cottrell:

Boston Gas Company, Colonial Gas Company, and Essex Gas Company each d/b/a
KeySpan Energy Delivery New England (collectively, "KeySpan"), are pleased to submit
the following comments in response to the Department of Telecommunications and
Energy ("Department") Briefing Question, dated June 19, 2003.

Background

On December 19, 2001, the Department opened an investigation into increasing
the penetration rate for discounted electric, gas and telephone service. The Department
has received initial and reply comments from interested parties in this proceeding.
Furthermore, the Department established working groups to identify issues and make
recommendation to increase the penetration rate for the discount rate. The working
groups submitted recommendations to the Department on September 17, 2002. On April
29, 2003, the Department met with interested parties regarding the Department's Notice

of Inquiry into increasing the penetration rate for discounted electric, gas and telephone service. (Memorandum from Michael Killion, dated, June 19, 2003). At the meeting, the Department proposed a computer-matching program with the Executive Office of Health and Human Services (“EOHHS”) exchanging customer eligibility information with electric distribution companies, gas distribution companies and eligible telecommunications carriers for the sole purpose enrolling eligible customers in discount programs. Id.

On June 19, 2003, the Department requested comments on the following briefing question:

Please discuss any legal impediment and legal justification for utility participation in a computer matching program with EOHHS that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

KeySpan supports the Department’s efforts to seek the most efficient method of identifying the eligible customers for the low-income discount rate. As the Department is fully aware from KeySpan’s earlier comments in this proceeding, KeySpan has extensive outreach programs currently in place that attempt to enroll eligible customers on the discount rate. However, as discussed further below, KeySpan has some privacy and rate design concerns regarding the Department’s computer matching as currently envisioned by the Department.

Discussion

I. Privacy Issues:

KeySpan considers its customers' information to be confidential and proprietary and therefore does not disclose such information to third parties without customer consent. KeySpan is concerned that the proposed computer matching program between EOHHS and the utilities entire residential customer account database may violate privacy laws absent written permission from the affected customers. The proposed computer matching program would require each utility, on a quarterly basis, to electronically transfer its entire residential customer account database to EOHHS for electronic matching with the database of means tested public benefit recipient. EOHHS would send the list of eligible customer's back to the utility for enrollment on the discount rate. EOHHS would then destroy the database file sent by the utility.

KeySpan believes that some of its customers may object to KeySpan sending their information to EOHHS. Of particular concern would be those customers who are not eligible to receive the discount rate. Under M.G.L. c 214, Section 1B "a person shall have the right against unreasonable, substantial or serious interference with his privacy". In Commonwealth of Massachusetts v. Source One Associates, Inc., et al. 1999 Mass. Supper. Lexis 402 at 42 (Oct 14, 1999) the Court stated "in an age of computer databases and electronic retrieval of sensitive information, the public is justly concerned that the privacy of personal information be protected. The public should be able to have confidence that personal information remain private" The average utility customer would not expect that their customer information which would include their name, address and social security number, if available would be sent by the utility to EOHHS. While, KeySpan supports the Department's goal of increasing the penetration rate of customers on the discount rate, the Department needs to take into consideration the issue of the

confidentiality of all customer information, not just those customers who are eligible for the discount rate.

Additionally, the sharing of customer information with EOHHS could result in the release of such information to the general public thus causing further privacy concerns. Any information received by EOHHS from KeySpan or any other utility is subject to public disclosure under the Public Records Law unless such information meets one of the statutory exceptions M.G.L.c 4, Section 7 (clause 26). There is an argument that this customer data falls into an exemption to the definition of “public records” insofar as the “data relates to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy” subsection (c). Although this exception appears to apply, there is no clear precedent interpreting this section.

Although KeySpan supports the Department’s goal of finding the most effective method of identifying eligible customers for the discount rate, the current proposal raises important privacy concerns that the Department should carefully consider before implementing there proposal. As mentioned at the meeting on April 29, 2003, both the Department of Transitional Assistance (“DTA”) and Division of Medical Assistance (“DMA”) are adding check-off boxes on their applications to where prospective recipients would agree to let their information to be shared with utilities for the sole purpose of verifying their eligibility for discounted service. KeySpan suggests that EOHHS send its database to the utilities to match up with their customer lists. This would largely solve the privacy issues raised by the current proposal, as these agencies would have written permission to share this information with the utilities. KeySpan would be happy to further explore this option with the Department.

II. Rate Issues

In addition to the privacy concerns raised above, cost considerations may also pose a legal impediment to the proposed computer-matching program. If the Department successfully implements this program and as a result there is a significant increase in the number of customers that are on the discount rate, KeySpan's current rates will not be sufficient to cover the program. As the Department is aware, KeySpan's rates have been historically based upon a certain percentage of low-income customers and the cost of providing the discount rate is built into the rates of the non discount customers. Therefore, KeySpan is requesting that the Department include a mechanism by which utilities can seek rate relief if there is a significant increase in the number of discount rate customers resulting from the implementation of a computer-matching program.

Finally, to the extent that KeySpan incurs additional administrative costs as a result of a new computer-matching program, the Department should provide a mechanism to reimburse KeySpan for such costs through rates.

Conclusion

KeySpan appreciates the opportunity to submit these comments regarding the Department's briefing question. KeySpan supports the Department's efforts to increase the penetration rate for eligible customers in discount programs. As mentioned above, KeySpan has concerns regarding the privacy issues and rate issues with the current proposed computer-matching program. In addition, KeySpan believes that the Department should provide utilities a mechanism to adjust their residential rates if as a result of the computer matching program there is a significant increase in the number of

discount customers. KeySpan looks forward to working with the Department to find a result that meets the Department's objectives while addressing KeySpan's concerns.

Very truly yours,

Christopher S. Aronson, Counsel
Richard A. Visconti, General Counsel

CSA/

cc: Michael Killion (electronic copy)
Service List